



217-19

**NIFS ID:CFPW19000027 Department: Public Works****Capital: X**

SERVICE: IMA-City of Long Beach Sewer-BPWPCP

Contract ID #:CFPW19000027 NIFS Entry Date: 14-JUN-19 Term: from to

New
Time Extension:
Addl. Funds:
Blanket Resolution:
RES#

1) Mandated Program:	
2) Comptroller Approval Form Attached:	Y
3) CSEA Agmt. § 32 Compliance Attached:	N
4) Vendor Ownership & Mgmt. Disclosure Attached:	Y
5) Insurance Required	N

<b>Vendor Info:</b>	
Name: <b>City of Long Beach</b>	Vendor ID#: <b>116000351</b>
Address: City Hall  One West Chester Street  Long Beach, New York 11561	Contact Person:
	Phone:

<b>Department:</b>	
Contact Name: Kenneth Arnold	
Address: Nassau County DPW  1194 Prospect Avenue  Westbury, New York 11590	
Phone:	

**Routing Slip**

Department	NIFS Entry: X	14-JUN-19 -- LDIONISIO
Department	NIFS Approval: X	14-JUN-19 -- RDALLEVA
DPW	Capital Fund Approved: X	14-JUN-19 -- RDALLEVA
OMB	NIFA Approval: X	14-JUN-19 -- IQURESHI
OMB	NIFS Approval: X	14-JUN-19 -- NGUMIENIAK
County Atty.	Insurance Verification: X	14-JUN-19 -- DGRIPPO
County Atty.	Approval to Form: X	14-JUN-19 -- DGRIPPO
CPO	Approval: X	14-JUN-19 -- KOHAGENCE

DCEC	Approval: X	14-JUN-19 -- JCHIARA
Dep. CE	Approval: X	14-JUN-19 -- BSCHNEIDER
Leg. Affairs	Approval/Review: X	14-JUN-19 -- JSCHANTZ
Legislature	Approval:	
Comptroller	Deputy:	
NIFA	NIFA Approval:	

## Contract Summary

**Purpose:** Intermunicipal Agreement for the connection of the Long Beach sewer system to the Bay Park Water Pollution Control Plant. Consistent with its desire to eliminate pollution in the Western Bays of the South Shore, the County, as a term of its January 2018 Agreement with the New York State Department of Environmental Conservation agreed to accept an Intermunicipal Agreement with the City of Long Beach to eliminate the City's wastewater treatment plant (LBWPCP) and connect the City sewer system to the rebuilt Bay Park Water Pollution Control Plant (BPWPCP). All wastewater entering the BPWPCP will received enhanced nitrogen reduction treatment and will eventually be conveyed to the ocean outfall utilized by the Cedar Creek WPCP.

**Method of Procurement:** The Nassau County Charter expressly recognizes the need for a Countywide sewer system. Section 1215 of the Charter states: "in order to preserve the health of the inhabitants of the County and to protect its potable water supply and its coastal waters from contamination and pollution the County must be authorized to provide sewer facilities adequate to serve the needs of the entire County, as provided in this article, and all such sewer facilities so provided will be of general benefit to the entire County and all its inhabitants." The Charter further states that the County shall have the power to acquire existing sewage facilities, including municipal facilities. Charter § 1217. Accordingly, the County is expressly authorized to merge the Long Beach sewage collection and treatment facilities into the County system.

**Procurement History:** Intermunicipal Agreement

**Description of General Provisions:** Description of General Provisions: The following is a list of the drafted Intermunicipal Agreement components:

- o The County will build, own and operate all the facilities necessary to connect the City's sewer system to the BPWPCP including a sewage pump station on the LBWPCP site and a force main;
- o The City will be responsible for the decommissioning, demolition and disposition of the LBWPCP and will retain ownership of that defunct portion of the property;
- o During the connecting construction, the City will continue to operate and maintain its sewer system and treatment plant;
- o The City will continue to assess, impose and collect the sewer use fees from its residents both as it continues to operate and maintain its sewer system and treat plant during construction, and after the connection to the BPWPCP for as long as the City's sewer debt is outstanding;
- o In exchange for the remittance of the sewer use fees, the County will assume responsibility for payment of the City's outstanding sewer debt until paid or refunded;
- o After the connection to the BPWPCP, the City will remit the sewer use fees to the County until the City is consolidated into one or more zones of assessment within the County's sewer district;
- o No City employees will be transferred to County employ; and
- o The County and the City will jointly and cooperatively pursue State and federal grant funding and loans to pay for the project.

**Impact on Funding / Price Analysis:** The total estimated cost to connect the City sewer system to the Bay Park WPCP is \$77 million. To date approximately \$20 million has been secured, 75% by NYS grants. To meet the remaining funding need the County

and the City are pursuing approximately \$25 million in the recently announced round of new available NYS grant money, as well as federal grant funds that have recently been identified through FEMA and HUD programs. As required to support the grant applications for project funding, the County will be submitting a new \$66,383,594 bond resolution to the Legislature for approval.

**Change in Contract from Prior Procurement:** N/A

**Recommendation:** (approve as submitted) Approve as submitted

## Advisement Information

BUDGET CODES		FUNDING SOURCE	AMOUNT	LINE	INDEX/OBJECT CODE	AMOUNT
Fund:	CSW	Revenue		1	PWCSWCSW/3510	\$ 0.01
Control:	35	Contract:			9/000/00006	\$ 0.00
Resp:	109	County	\$ 0.00			\$ 0.00
Object:	00006	Federal	\$ 0.00			\$ 0.00
Transaction:	CF	State	\$ 0.00			\$ 0.00
Project #:	35109	Capital	\$ 0.01			\$ 0.00
Detail:	000	Other	\$ 0.00			\$ 0.00
		TOTAL	\$ 0.01		TOTAL	\$ 0.01
RENEWAL						
% Increase						
% Decrease						

# NIFA Nassau County Interim Finance Authority

## Contract Approval Request Form (As of January 1, 2015)

1. Vendor: City of Long Beach

2. Dollar amount requiring NIFA approval: \$.01

Amount to be encumbered: \$.01

This is a New

If new contract - \$ amount should be full amount of contract

If advisement – NIFA only needs to review if it is increasing funds above the amount previously approved by NIFA

If amendment - \$ amount should be full amount of amendment only

3. Contract Term: Execution to consolidation

Has work or services on this contract commenced? N       

If yes, please explain:

4. Funding Source:

General Fund (GEN)	Grant Fund (GRT)	Federal % 0
X Capital Improvement Fund (CAP)		State % 0
Other		County % 0

Is the cash available for the full amount of the contract? N

If not, will it require a future borrowing? Y

Has the County Legislature approved the borrowing? N

Has NIFA approved the borrowing for this contract? N

5. Provide a brief description (4 to 5 sentences) of the item for which this approval is requested:

Intermunicipal Agreement for the connection of the Long Beach sewer system to the Bay Park Water Pollution Control Plant. Consistent with its desire to eliminate pollution in the Western Bays of the South Shore, the County, as a term of its January 2018 Agreement with the New York State Department of Environmental Conservation agreed to accept an Intermunicipal Agreement with the City of Long Beach to eliminate the City's wastewater treatment plant (LBWPCP) and connect the City sewer system to the rebuilt Bay Park Water Pollution Control Plant (BPWPCP). All wastewater entering the BPWPCP will received enhanced nitrogen reduction treatment and will eventually be conveyed to the ocean outfall utilized by the Cedar Creek WPCP.

6. Has the item requested herein followed all proper procedures and thereby approved by the:

Nassau County Attorney as to form Y

Nassau County Committee and/or Legislature

Date of approval(s) and citation to the resolution where approval for this item was provided:

7. Identify all contracts (with dollar amounts) with this or an affiliated party within the prior 12 months:

Contract ID	Date	Amount

## AUTHORIZATION

To the best of my knowledge, I hereby certify that the information contained in this Contract Approval Request Form and any additional information submitted in connection with this request is true and accurate and that all expenditures that will be made in reliance on this authorization are in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan. I understand that NIFA will rely upon this information in its official deliberations.

IQURESHI

14-JUN-19

**Authenticated User**

**Date**

## COMPTROLLER'S OFFICE

To the best of my knowledge, I hereby certify that the information listed is true and accurate and is in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan.

Regarding funding, please check the correct response:

☐ I certify that the funds are available to be encumbered pending NIFA approval of this contract.

If this is a capital project:

☐ I certify that the bonding for this contract has been approved by NIFA.

☐ Budget is available and funds have been encumbered but the project requires NIFA bonding authorization

**Authenticated User**

**Date**

## NIFA

Amount being approved by NIFA:

Payment is not guaranteed for any work commenced prior to this approval.

**Authenticated User**

**Date**

**NOTE: All contract submissions MUST include the County's own routing slip, current NIFS printouts for all relevant accounts and relevant Nassau County Legislature communication documents and relevant supplemental information pertaining to the item requested herein.**

**NIFA Contract Approval Request Form MUST be filled out in its entirety before being submitted to NIFA for review.**

**NIFA reserves the right to request additional information as needed.**

A RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AN  
INTER-MUNICIPAL AGREEMENT WITH THE CITY OF LONG BEACH FOR THE  
CONSOLIDATION OF SEWER TREATMENT RESOURCES AND SERVICES.

APPROVED AS TO FORM

Deputy County Attorney

WHEREAS, the County of Nassau (the “County”) and the City of Long Beach (the “City”) are authorized, pursuant to Article 5-G of the General Municipal Law to enter into inter-governmental agreements; and

WHEREAS, it is in the best interests of the County and City for the City to connect the City sewer system to the County’s rebuilt Bay Park Water Pollution Control Plant (the “Project”); and

WHEREAS, the County and the City believe it to be in the best interest of the taxpayers of their respective municipalities to authorize inter-municipal cooperation with respect to the mutual covenants set forth in the proposed inter-municipal agreement, a copy of which is on file with the Clerk of the Legislature; now, therefore, be it

RESOLVED, that the Nassau County Legislature authorizes the County Executive to execute the said inter-municipal agreement with the City, and to execute any additional documents in furtherance of such inter-municipal agreement, all in relation to the aforesaid Project; and be it further

RESOLVED that pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 N.Y.E.C.L. section 0101 *et seq.* and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and as determined by the New York State Department of Environmental Conservation (NYSDEC) and set forth in the Bay Park Agreement between NYSDEC and the County approved by the Nassau County Legislature and fully executed on January 11, 2018, at paragraph 29, all actions and approval necessary for this Intermunicipal Agreement are Type II action under ECL § 8-0105(5) and 6NYCRR § 617.5( c)(29), and Section 1611 of the County Government Law of Nassau County said Project is a "Type II Action" within the meaning of Section 617.5 of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment and no further review is required.



Jack Schnirman  
Comptroller



OFFICE OF THE COMPTROLLER  
240 Old Country Road  
Mineola, New York 11501

## COMPTROLLER APPROVAL FORM FOR PERSONAL, PROFESSIONAL OR HUMAN SERVICES CONTRACTS

*Attach this form along with all personal, professional or human services contracts, contract renewals, extensions and amendments.*

CONTRACTOR NAME: City of Long Beach

CONTRACTOR ADDRESS: One West Chester Street, Long Beach, NY 11561

FEDERAL TAX ID #: VF-116000351-01

**Instructions:** Please check the appropriate box ("☐") after one of the following roman numerals, and provide all the requested information.

I. ☐ The contract was awarded to the lowest, responsible bidder after advertisement for sealed bids. The contract was awarded after a request for sealed bids was published in \_\_\_\_\_ [newspaper] on \_\_\_\_\_ [date]. The sealed bids were publicly opened on \_\_\_\_\_ [date]. \_\_\_\_\_ [#] of sealed bids were received and opened.

II. ☐ The contractor was selected pursuant to a Request for Proposals.

The Contract was entered into after a written request for proposals was issued on \_\_\_\_\_ [date]. Potential proposers were made aware of the availability of the RFP by advertisement in \_\_\_\_\_ [newspaper], posting on industry websites, via email to interested parties and by publication on the County procurement website. Proposals were due on \_\_\_\_\_ [date]. \_\_\_\_\_ [state #] proposals were received and evaluated. The evaluation committee consisted of: \_\_\_\_\_

\_\_\_\_\_ (list # of persons on committee and their respective departments). The proposals were scored and ranked. As a result of the scoring and ranking, the highest-ranking proposer was selected.

**III. ☐ This is a renewal, extension or amendment of an existing contract.**

The contract was originally executed by Nassau County on \_\_\_\_\_ [date]. This is a renewal or extension pursuant to the contract, or an amendment within the scope of the contract or RFP (copies of the relevant pages are attached). The original contract was entered into after \_\_\_\_\_

\_\_\_\_\_  
[describe procurement method, i.e., RFP, three proposals evaluated, etc.] Attach a copy of the most recent evaluation of the contractor's performance for any contract to be renewed or extended. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to continue to contract with the county.

**IV. ☐ Pursuant to Executive Order No. 1 of 1993, as amended, at least three proposals were solicited and received. The attached memorandum from the department head describes the proposals received, along with the cost of each proposal.**

- ☐ A. The contract has been awarded to the proposer offering the lowest cost proposal; OR:
- ☐ B. The attached memorandum contains a detailed explanation as to the reason(s) why the contract was awarded to other than the lowest-cost proposer. The attachment includes a specific delineation of the unique skills and experience, the specific reasons why a proposal is deemed superior, and/or why the proposer has been judged to be able to perform more quickly than other proposers.

**V. ☒ Pursuant to Executive Order No. 1 of 1993 as amended, the attached memorandum from the department head explains why the department did not obtain at least three proposals.**

- ☐ A. There are only one or two providers of the services sought or less than three providers submitted proposals. The memorandum describes how the contractor was determined to be the sole source provider of the personal service needed or explains why only two proposals could be obtained. If two proposals were obtained, the memorandum explains that the contract was awarded to the lowest cost proposer, or why the selected proposer offered the higher quality proposal, the proposer's unique and special experience, skill, or expertise, or its availability to perform in the most immediate and timely manner.
- ☐ B. The memorandum explains that the contractor's selection was dictated by the terms of a federal or New York State grant, by legislation or by a court order. (Copies of the relevant documents are attached).
- ☐ C. Pursuant to General Municipal Law Section 104, the department is purchasing the services required through a New York State Office of General Services contract no. \_\_\_\_\_, and the attached memorandum explains how the purchase is within the scope of the terms of that contract.

- ☒ **D.** Pursuant to General Municipal Law Section 119-o, the department is purchasing the services required through an inter-municipal agreement.

**VI. ☐ This is a human services contract with a not-for-profit agency for which a competitive process has not been initiated.** Attached is a memorandum that explains the reasons for entering into this contract without conducting a competitive process, and details when the department intends to initiate a competitive process for the future award of these services. For any such contract, where the vendor has previously provided services to the county, attach a copy of the most recent evaluation of the vendor's performance. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to contract with the county.

In certain limited circumstances, conducting a competitive process and/or completing performance evaluations may not be possible because of the nature of the human services program, or because of a compelling need to continue services through the same provider. In those circumstances, attach an explanation of why a competitive process and/or performance evaluation is inapplicable.

**VII. ☐ This is a public works contract for the provision of architectural, engineering or surveying services.** The attached memorandum provides details of the department's compliance with Board of Supervisors' Resolution No. 928 of 1993, including its receipt and evaluation of annual Statements of Qualifications & Performance Data, and its negotiations with the most highly qualified firms.

Instructions with respect to Sections VIII, IX and X: All Departments must check the box for VIII. Then, check the box for either IX or X, as applicable.

**VIII. ☒ Participation of Minority Group Members and Women in Nassau County Contracts.** The selected contractor has agreed that it has an obligation to utilize best efforts to hire MWBE sub-contractors. Proof of the contractual utilization of best efforts as outlined in Exhibit "EE" may be requested at any time, from time to time, by the Comptroller's Office prior to the approval of claim vouchers.

**IX. ☐ Department MWBE responsibilities.** To ensure compliance with MWBE requirements as outlined in Exhibit "EE", Department will require vendor to submit list of sub-contractor requirements prior to submission of the first claim voucher, for services under this contract being submitted to the Comptroller.

**X. ☒ Vendor will not require any sub-contractors.**

In addition, if this is a contract with an individual or with an entity that has only one or two employees: ☐ a review of the criteria set forth by the Internal Revenue Service, Revenue Ruling No. 87-41, 1987-1 C.B. 296, attached as Appendix A to the Comptroller's Memorandum, dated February 13, 2004, concerning independent contractors and employees indicates that the contractor would not be considered an employee for federal tax purposes.

  
Department Head Signature

4/2/19  
Date

NOTE: Any information requested above, or in the exhibit below, may be included in the county's "staff summary" form in lieu of a separate memorandum.

COUNTY OF NASSAU

CONSULTANT'S, CONTRACTOR'S AND VENDOR'S DISCLOSURE FORM

1. Name of the Entity: CITY OF LONG BEACH

Address: ONE WEST STREET

City, State and Zip Code: LONG BEACH, NY 11561

2. Entity's Vendor Identification Number: 116000351

3. Type of Business: ☐ Public Corp ☐ Partnership ☐ Joint Venture

☐ Ltd. Liability Co ☐ Closely Held Corp MUNICIPALITY Other (specify)

4. List names and addresses of all principals; that is, all individuals serving on the Board of Directors or comparable body, all partners and limited partners, all corporate officers, all parties of Joint Ventures, and all members and officers of limited liability companies (attach additional sheets if necessary):

CITY OF LONG BEACH COUNCIL MEMBERS:

ANTHONY ERAMO, PRESIDENT, 84 FLORIDA ST., LONG BEACH, NY 11561

CHUMI DIAMOND, VICE PRESIDENT, 10 FRANKLIN BLVD., LONG BEACH, NY 11561

SCOTT MANDEL, 102 ATLANTIC AVE., LONG BEACH, NY 11561

ANISSA MOORE, 427 E PINE ST., LONG BEACH, NY 11561

JOHN BENDO, 25 MARYLAND AVE., LONG BEACH, NY 11561

5. List names and addresses of all shareholders, members, or partners of the firm. If the shareholder is not an individual, list the individual shareholders/partners/members. If a Publicly held Corporation, include a copy of the 10K in lieu of completing this section.

NONE

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6. List all affiliated and related companies and their relationship to the firm entered on line 1. above (if none, enter "None"). Attach a separate disclosure form for each affiliated or subsidiary company that may take part in the performance of this contract. Such disclosure shall be updated to include affiliated or subsidiary companies not previously disclosed that participate in the performance of the contract.

NONE

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7. List all lobbyists whose services were utilized at any stage in this matter (i.e., pre-bid, bid, post-bid, etc.). If none, enter "None." The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

(a) Name, title, business address and telephone number of lobbyist(s):

NONE

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(b) Describe lobbying activity of each lobbyist. See below for a complete description of lobbying activities.

NONE

(c) List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

NONE

8. VERIFICATION: This section must be signed by a principal of the consultant, contractor or Vendor authorized as a signatory of the firm for the purpose of executing Contracts.

The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

Dated: 4/1/19

Signed: Robert Agostis

Print Name: Robert Agostis

Title: Acting City Manager

The term lobbying shall mean any attempt to influence: any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including by not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions, department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission, with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.

AGREEMENT BETWEEN THE COUNTY OF NASSAU, NEW YORK,  
AND THE CITY OF LONG BEACH, NEW YORK, FOR THE  
CONSOLIDATION OF SEWER TREATMENT RESOURCES AND SERVICES

THIS INTERMUNICIPAL AGREEMENT (this “**Agreement**”) made and entered as of the Effective Date, by and between the COUNTY OF NASSAU, a municipal corporation, having its principal offices at 1550 Franklin Avenue, Mineola, New York 11501 (hereinafter referred to as the “**County**”) and the CITY OF LONG BEACH, a municipal corporation, having offices at 1 West Chester Street, Long Beach, New York 11561 (hereinafter referred to as the “**City**”) concerning consolidation of infrastructure and services.

RECITALS

WHEREAS, Article 5-G of the New York General Municipal Law (“**GML**”) authorizes municipal corporations and districts to perform their functions, duties and powers on a cooperative basis with other municipal corporations and districts pursuant to municipal cooperation agreements;

WHEREAS both the County and the City are municipal corporations, as defined in Article 1 of the GML;

WHEREAS, the City owns and operates the Long Beach Water Pollution Control Plant (the “**LBWPCP**”) which serves the City of Long Beach and a portion of the unincorporated area of Lido Beach;

WHEREAS, the County owns and operates the Bay Park Water Pollution Control Plant (the “**BPWPCP**”) which serves a portion of western Nassau County;

WHEREAS, both the LBWPCP and the BPWPCP outfalls are located in Reynolds Channel, which is part of the waterbody known as the Western Bays. The Western Bays is considered an impaired waterbody due to low ocean water turnover and high nutrient loads from LBWPCP and BPWPCP;

WHEREAS, on or about October 29, 2012, Superstorm Sandy impacted the Long Island region causing significant flooding, damage and destruction to real property throughout the region;

WHEREAS, Superstorm Sandy also caused considerable damage to the LBWPCP and the BPWPCP and their collection systems;

WHEREAS, both the City and the County are eligible for receipt of funds for repair, restoration and mitigation costs from the Federal Emergency Management Agency (“**FEMA**”) and the Department of Housing and Urban Development (“**HUD**”) through the New York State Department of Homeland Security and Emergency Services (“**DHSES**”) and the New York State Governor’s Office of Storm Recovery (“**GOSR**”) to address the damage caused to the LBWPCP and the BPWPCP and their collection systems by Superstorm Sandy and to protect and improve



the resiliency of their infrastructure against future hazardous weather conditions; ;

WHEREAS, from and after Superstorm Sandy, the City has diligently engaged in recovery efforts and sought funding to repair and upgrade the LBWPCP against future hazardous weather conditions;

WHEREAS, high nutrient loads adversely impacts not only the waters of the Western Bays, but also contribute to the degradation and loss of marsh islands. Marsh islands reduce storm surge and tidal inundation, so their loss makes the County and the City more vulnerable to the effects of powerful storms;

WHEREAS, in June 2017, the City entered into and Administrative Consent Order with the New York State Department of Environmental Conservation (“DEC”) (“City ACO”). The City ACO requires, among other things, the City to address the water quality standard violations caused by nitrogen in the LBWPCP’s discharge into Reynolds Channel. The City ACO recognizes that the most cost effective and feasible means of addressing nitrogen discharge violations is to eliminate the discharge by connecting the City’s collection system to the County’s BPWPCP. Accordingly, the City ACO requires the City to execute an Intermunicipal Agreement with the County for the connection of the City to the BPWPCP, or to upgrade the LBWPCP based on the limit of technology for nitrogen;

WHEREAS, in January 2018, the County and the DEC entered into an Agreement (“County Agreement”). The County Agreement requires, among other things, the County to address the water quality standard violations caused by nitrogen in the BPWPCP effluent. The County Agreement recognizes that the most cost effective and feasible means of addressing nitrogen discharge violations is to eliminate the discharge into Reynolds Channel by diverting the water treated at BPWCP to the County’s existing ocean outfall. As part of the County Agreement, the County agreed to enter into an Intermunicipal Agreement with the City for the connection of the City to the BPWPCP;

WHEREAS, consolidation of sewage treatment and disposal facilities will reduce overlapping services and duplicative responsibilities resulting in more efficient allocation of government resources and cost savings for County and City residents;

WHEREAS the City and the County agree to separately and jointly to seek federal and New York State funding for the repurposing certain LBWPCP influent structures and construction of a pump station and construction of a new force mains by the County to connect the City’s collection system to the BPWPCP;

WHEREAS, on December 10, 2015 the State of New York awarded the County \$3.72 million to pay for an Engineering and Design Report to evaluate the diversion of wastewater from the City to the BPWPCP;

WHEREAS, the City and the County submitted a joint Intent to Propose form with supporting documents for consideration by the New York State Department of State 2016-17 Municipal Consolidation and Efficiency Competition for a joint project proposed by the

County and the City for the consolidation of wastewater services;

WHEREAS, the joint Intent to Propose was not selected for funding by the Department of State;

WHEREAS, the County and the City intend to jointly work together to submit Consolidated Funding Applications, to the Long Island Regional Economic Development Council and involved state agencies for consideration under grant programs supporting consolidation of wastewater treatment systems;

WHEREAS, the County and the City are jointly working together to pursue grants for the Project through grant programs administered by DEC, GOSR, DHSES and the New York state Environmental Facilities Corporation ("EFC");

WHEREAS, the elimination of the LBWPCP outfall and the connection of the City's Collection System to the rebuilt and improved BPWPCP will, along with other Western Bays projects, yield significant improvements in water quality- supporting community health, ecosystem improvement, recreational opportunities, and storm resiliency;

WHEREAS, the County and the City wish to enter into an agreement that will provide for, according to the terms of this Agreement: (i) the repurposing of certain LBWPCP influent structures and construction of a pump station by the County, (ii) the construction and installation of all necessary force mains and appurtenances to convey City sewage to the BPWPCP; (iii) the County ownership, operation and maintenance of the City's sanitary sewer system and infrastructure and consolidation of the area of the City in the District (as hereinafter defined) and (iv) collection, treatment and disposal of the City sewage by the County at the BPWPCP;

WHEREAS, the County and the City each represent that the respective municipalities are authorized, pursuant to both Article 9, Section 1 of the New York State Constitution and the GML to enter into intergovernmental cooperative agreements;

WHEREAS, the County and the City, believing it to be in the best interest of the taxpayers of their respective municipalities, do hereby mutually authorize inter-municipal cooperation and assistance with and between each other for the consolidation of infrastructure and services.

NOW, THEREFORE, in consideration of the above recitals and the agreements and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged and agreed upon, the Parties hereto do agree as follows:

## **I. Definitions**

1.1 Defined Terms. In addition to terms defined in the Act, and elsewhere herein, the following terms shall have the following meanings in this Agreement, unless the context requires otherwise.

(a) “**Act**” shall mean Chapter 685 of the Laws of New York of 2003, as it may be amended from time to time.

(b) “**BPWPCP**” shall have the same meaning as in the recitals above.

(c) “**Collection System**” shall mean the existing main and public laterals, intermediate pump station and manholes and all other associated components owned by the City, apart from its separate storm water collection system, as described in Appendix A attached hereto and hereby made a part hereof, including all existing easements and access rights relating thereto. The Collection System does not include the private sewer laterals, and the obligations of the City pursuant to the settlement of *Thomas v. City of Long Beach*, Ordinance 2086/14, and the Agreement for Private Sewer Line Service Plan between the City and Michael Thomas, Docket No. 12-cv-06413, dated as of June 5, 2014.

(d) “**Connection**” shall have the meaning provided in Section 7.1.

(e) “**Connection Date**” shall have the meaning provided in Section 7.2.

(f) “**Construction Phase**” shall mean the period from the date of the Notice to Proceed to the Connection Date.

(g) “**Contract Administration Memorandum**” shall have the meaning provided in Section 8.19.

(h) “**Debt Statement**” shall have the meaning provided in Section 3.1(g)(i).

(i) “**District**” shall mean the Nassau County Sewer and Storm Water Resources District, as established by the Act.

(j) “**Effective Date**” shall mean the date this Agreement is fully executed.

(k) “**Event of Default**” shall have the meaning provided in Section 8.12.

(l) “**Funding Plan**” shall mean a plan agreed upon by the Parties to provide, at the appropriate time, all necessary funding to complete the project. The Funding Plan shall be attached to and made part hereof at Appendix H.

(m) “**Interim Operating Term**” shall have the meaning provided in Section 6.1(a).

(n) “**Law**” shall have the meaning provided in Section 8.9(a).

(o) “**LBWPCP**” shall have the same meaning as in the recitals above.

(p) “**Notice to Proceed**” shall have the meaning provided in Section 5.1.

(q) “**Party**” or “**Parties**” shall mean a party or parties to this Agreement.

(r) **“Plant”** shall mean the LBWCPC including all buildings, appurtenances, equipment, structures, foundations, treatment units, fixtures, improvements above or below the surface and all other associated components, including, but not limited to, process tanks, sewer lines, the sewage outfall pipe, pumps, blowers and site drainage owned by the City and described in Appendix C attached hereto which contains the parcel of land shown in Appendix B attached hereto, but shall not include the “Plant Site,” as defined herein.

(s) **“Plant Site”** shall mean the parcel of land owned by the City and shown in Appendix B attached hereto and hereby made a part hereof.

(t) **“Pre-Construction Phase”** shall be the period from the Effective Date until the County issues the Notice to Proceed and shall include the actions set forth in Article IV hereof.

(u) **“Project”** shall have the meaning provided in Section 2.1.

(v) **“Phase”** shall be a component of the project as described in Appendix G.

(w) **“Phased Project Schedule”** shall be the schedule of Phases of the Project as set forth in Appendix G.

(x) **“Pump Station”** shall mean that facility which the Parties propose to have repurposed certain LBWPC influent structures and constructed a Pump Station on the Pump Station Lot to pump sewage from the Collection System to the BPWPCP.

(y) **“Pump Station Lot”** shall mean the parcel of land owned by the City, to be transferred to the County, containing the Plant influent structures to be repurposed, the newly constructed pumping facilities and other structures and appurtenances necessary to convey, after the Connection Date, sewage from the Sewer System to the BPWPCP, all as shown in Appendix B attached hereto and hereby made a part hereof

(z) **“Sewerage Services”** shall mean the collection, treatment and disposal of sewage collected by the Sewer System,

(aa) **“Sewer Use Fee Schedule”** shall mean the current schedule of sewer use fee imposed and collected in the City. A copy of the Sewer Use Fee Schedule in effect as of the Commencement Date is annexed hereto and hereby made a part hereof as Appendix D.

(bb) **“Sewer System”** prior to the Connection Date, shall mean the entire Plant and the publicly-owned Collection System comprising the City’s sanitary sewage collection and disposal system, collectively including, but not limited to, the material components, any plants, structures and other real and personal property acquired, rehabilitated or constructed or planned for the purpose of collecting, conveying, pumping, treating, neutralizing, storing and disposing of sanitary sewage (but excluding the Plant Site). After the Connection Date, the Plant shall be excluded from this definition, and the Pump Station shall be added.

(cc) “State” shall mean the State of New York and all state agencies and authorities relevant to the Project.

## II. The Project

### 2.1 The Project.

(a) In accordance with the terms and conditions contained in this Agreement, and the phased schedule in Appendix G annexed here to and made part hereof, the County, or the City as applicable shall (i) repurpose a portion of the LBWPCP influent structures and construct a Pump Station on the Pump Station Lot, (ii) have force main(s) installed to connect the Pump Station and the Sewer System to the BPWPCP, (iii) at the Connection Date as set forth in Section 7.2, acquire from the City the Sewer System and Pump Station Lot; (iv) at the Connection Date as set forth in Section 7.2, own, operate, and maintain the Sewer System or any portion thereof, (v) at the Connection Date as set forth in Section 7.2, provide Sewerage Services to City residents and property owners connected to the Sewer System; (vi) assume responsibility for operation and management of the Sewer System by transitioning and consolidating the City into one or more County zones of assessment within the District, including changing the boundaries of the applicable uniform zone(s) of assessment for collection and disposal services in the District to include the area of the City; (vii) at the Connection Date as set forth in Section 7.2, the City shall convey the Collection System and Pump Station Lot to the County, and (viii) the City shall collect the Sewer Use Fees from its residents, and, at the Connection Date as set forth in Section 7.2, pay the collected fees to the County less the agreed upon administrative costs to collect the fees until such time as the area of the City is consolidated into one or more County zones of assessment within the District, including changing the boundaries of the applicable uniform zone(s) of assessment for collection and disposal services in the District to include the area of the City, all in accordance with applicable Laws and in any and all events subject to the agreement of the Parties and in accordance with, and to facilitate the purposes of, this Agreement. All of the obligations enumerated in clauses (i) through (viii) above are hereinafter collectively referred to as the “**Project.**”

(b) In accordance with the receipt of funding which is necessary to carry out the phase of the Project but prior to the issuance of the Notice to Proceed for each Phase pursuant to Section 5.1 of this Agreement, the Parties shall meet and confer and use good faith efforts to identify the duties and obligations of the County and the City in connection with the development of the Project Phase and shall confirm such duties and obligations in writing through the Contract Administration Memorandum process as such is described and defined in 8.19. The County and the City shall perform their respective duties and obligations in connection with the development of the Project in accordance with applicable Laws, including, but not limited to, the bidding and letting of contracts for all labor and materials in a manner consistent with all applicable Laws, the administration of all Project contracts and more generally, the management and supervision of the construction activities for the Project including obtaining all requisite approvals.

### III. Representations and Warranties

3.1 Representations and Warranties of the City. The City represents and warrants that to the best of its knowledge, as of the Effective Date hereof and at all times during the term of this Agreement, the following:

(a) Municipal Corporation. The City is a municipal corporation of the State, constituting a political subdivision thereof, duly created and validly existing under the Constitution and Laws of the State.

(b) Authority and Power. The City has the right, power and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein and to consummate the transactions contemplated hereby.

(c) Authorization. The City has duly authorized, by all necessary actions, the execution and delivery hereof and the performance of its obligations and covenants hereunder and the consummation of the transactions contemplated hereby.

(d) Enforceability. This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other Laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

(e) No Conflicts. This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby do not and will not in any material respect conflict with, or constitute on the part of the City a breach of or default under (i) any existing Law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (ii) any agreement, bond or other instrument to which the City is a party or by which it or any of its revenues, properties or operations are bound or subject.

(f) Ownership.

(i) The City has, to its knowledge, good and marketable title to all real and personal property comprising the Sewer System and will transfer and convey, as may be required pursuant to this Agreement, such right, title and interest in and to the Sewer System and the Pump Station Lot to the County, free and clear of all liens other than liens permitted by the County. The Parties agree to grant any easements, permits, permissions and/or licenses on, in and over property owned by other Party to the other Party necessary to effectuate the purposes of this Agreement.

(g) City Financing.

(i) Set forth in Appendix E attached hereto and hereby made a part hereof, is a true and complete statement of all indebtedness of the City (the "**Debt Statement**") issued in connection with the Sewer System, including, but not limited to, a statement of outstanding principal balances, scheduled payments and maturities, interest rates and payment status.

(ii) No default has occurred under any of the bonds, notes, bond indentures or other financing agreements evidencing the indebtedness, and, to the knowledge of the City, there is no existing condition that with the passage of time, the giving of notice, or both, may become a default or event of default by any party under any bond, note, bond indentures or other financing agreements.

(iii) This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it or any of its revenues, properties or operations are bound or subject, including, without limitation, any bond indentures or other financing agreements.

(h) Sewer Use Fee Schedule. The Sewer Use Fee Schedule, as set forth in Appendix D attached hereto and made part hereof, is a true and complete statement of the sewer charges imposed in connection with the Sewer System as of the Effective Date.

(i) Possession. The City (i) has not received notice that any other person is in possession of the Sewer System or any part thereof, and (ii) has not granted anyone any license, lease or other right or interest relating to the use or possession of the Sewer System, or any part thereof, except that the City has granted properties located in the City the right, license and power to connect to and use the Sewer System;

(j) Condemnation. The City has received no notice of and has no other knowledge or information of any pending or contemplated condemnation action with respect to the Sewer System or any part thereof;

(k) Environmental Conditions.

(i) With the exception of a Notice of Violation from the DEC dated April 24, 2017, the City has not received notice of any pending or threatened environmental action, claim, complaint, summons, violation, or citation from any third party (including any governmental agency or authority) ("Environmental Action") relating to the Sewer System;

(ii) The City has not received any notice from any governmental authority or agency indicating that the Sewer System or any real property adjacent thereto has been or may be placed on any federal, state or local list as a result of the presence of hazardous materials or due to historic or existing environmental conditions;

(iii) The City has provided the County with access to its records to inspect, and copy at the County's expense, all reports, audits, studies or analyses of any kind whatsoever known by the City to be in its possession relating to environmental conditions affecting the Sewer System;

(iv) To the knowledge of the City, no hazardous materials have been used, manufactured, generated, sold, handled, treated, transported, stored or disposed of at the Sewer System by the City except in accordance with applicable Laws; and

(v) To the knowledge of the City, no hazardous materials have spilled, discharged, released, emitted, injected or leaked from, in, or migrated to or from the Sewer System in violation of applicable Laws.

(l) Certificates and Licenses. To the extent they are in the City's possession and not conspicuously posted at the Plant, the City has to its knowledge provided to the County any and all certificates, licenses, permits, authorizations or approvals issued in connection with Sewerage Services and the Sewer System.

(m) Repairs and Improvements. With the exception of a Notice of Violation from the DEC dated April 24, 2017, the City has not received any notice from any governmental authority or agency indicating that repairs or modification must be made to the Sewer System or any component thereof in order to comply with all applicable Laws, rules and regulations.

(n) Discharge Permit Requirements. Supplementing Section 3.1(k) and Section 3.1(m), the City will provide to the County certain notices of required actions and other correspondence between the City and the NYSDEC regarding discharge permits.

3.2 Representations and Warranties of the County. The County represents and warrants to the best of its knowledge, as of the Effective Date hereof and at all times during the term of this Agreement, the following:

(a) Municipal Corporation. The County is a municipal corporation of the State, constituting a political subdivision thereof, duly created and validly existing under the Constitution and Laws of the State.

(b) Authority and Power. The County has the right, power and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein and to consummate the transactions contemplated hereby.

(c) Authorization. The County has duly authorized, by all necessary actions, the execution and delivery hereof and the performance of its obligations and covenants hereunder and the consummation of the transactions contemplated hereby.

(d) Enforceability. This Agreement constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other Laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

(e) No Conflicts. This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby do not and will not in any material respect conflict with, or constitute on the part of the County a breach of or default under (i) any existing Law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (ii) any agreement or other instrument to which the County is a party or by which it or any of its revenues, properties or operations are bound or subject.



(f) Ownership. The County has, to its knowledge, good and marketable title to all real and personal property comprising the BPWPCP and, as of the Effective Date, has sufficient capacity to provide sewer services to the City.

(i) The County represents and covenants that it has now, or will obtain, all necessary easements, rights-of-way, and/or good and marketable title (from any and all public or private owners) needed to construct the force mains and appurtenances which will convey City sewage to the BPWPCP. The County further represents and covenants that it will obtain all necessary permits and/or licenses, from all applicable jurisdictions, needed to construct the force mains and appurtenances which will convey City sewage to the BPWPCP.

#### **IV. Pre-Construction Phase**

##### **4.1 Pump Station Lot, Access, Due Diligence and Transfer.**

(a) Beginning on the Effective Date, or sooner as agreed to by the City, the County and its authorized representatives and agents shall be entitled to enter upon the Sewer System, including, without limitation, the Pump Station Lot, at reasonable hours upon reasonable prior notice to the City in order to conduct such reasonable and customary inspections, studies, tests and reviews with respect to the Sewer System and the Project, which are necessary in connection with an assessment of (i) the structural integrity and physical condition of the Sewer System (the “**Engineering Review**”) and (ii) the environmental condition of the Sewer System, including, without limitation, a Phase I environmental assessment of the Sewer System (the “**Environmental Review**”; which, together with the Engineering Review, is hereinafter collectively referred to as the “**Due Diligence Review**”). Subject to the following sentence, prior to any such entry by the County’s authorized representatives and/or agents, the County shall submit, or cause to have submitted, to the City proof satisfactory to the City of insurance coverages in accordance with City requirements, including, but not limited to, a certificate of insurance naming the City as an additional insured. The City acknowledges and agrees that the County is self-insured and, as such, shall not be required to provide such certificates of insurance but shall provide proof of such self-insurance if and when requested by the City. Prior to performing any sampling or testing that disturbs the Sewer System or any City property, including, but not limited to, any so-called “Phase II” environmental assessment, the County must obtain the City’s prior written consent. The City shall cooperate with the County and its authorized representatives and agents in every reasonable way in connection with the Due Diligence Review. Copies of all studies, samplings, reports and data obtained by or for the benefit of the County, or any of its agencies or consultants, through the Due Diligence Review shall be provided promptly to the City without charge. The City shall have the right, but not the obligation, to have one or more officers, employees, agents and/or representatives present during any entry upon the Sewer System by the County, its authorized representatives and/or agents. The County will make, and will cause its representatives and agents to make, all commercially reasonable efforts not to interfere with or interrupt the City’s use or operation of the Sewer System and shall comply with the reasonable requests and requirements of the City with respect to any such entry. The County shall be responsible for, and shall indemnify, defend with such legal counsel as the City may approve, and hold harmless the City and all its successors and

assigns, and each of its officers, officials, employees, representatives and agents, from and against, any and all expenses, claims, demands, penalties, fines, awards, judgments, liabilities, settlements, damages, losses or any other expenses or costs (including without limitation, reasonable legal fees), caused by the exercise by the County of its rights under this Section 4.1(a), except to the extent caused by the negligence or willful misconduct of, or uncured breach of this Agreement by, the City. The provisions of the foregoing indemnification provision shall survive the expiration or sooner termination of this Agreement.

(b) In the event that the County determines from the Due Diligence Review that the Sewer System, or any component thereof, including, without limitation, the Pump Station Lot is not acceptable, then the County shall provide written notice to the City thereof (and set forth the reasons for such determination) and either (i) the Parties will mutually agree on an alternate location for the Pump Station Lot and amend Appendix B accordingly or (ii) the County or the City may terminate this Agreement upon written notice to the other. Prior to the County exercising any rights under this provision, the City may - by giving written notice to the County within ten (10) calendar days following its receipt of the County's notice referenced above - give notice of the City's intention to cure or correct the reasons cited by the County in its notice that the Pump Station Lot is not acceptable. The City shall, for a period of not more than six (6) months following the date it gives such notice to the County as hereinbefore set forth, have the right to attempt to cure or correct such reasons cited by the County. If the City is able to cure or correct the reasons cited by the County, as determined in the sole discretion of the County, within such time period, the Parties shall continue to proceed towards the Construction Phase without penalty to the City, as if there were no defects requiring remediation. In the event the City is unable to cure or correct such reasons within such six month time period, then in such event either (i) the Parties will mutually select an alternate location for the Pump Station Lot and amend Appendix B accordingly or (ii) the County or the City may terminate this Agreement upon written notice to the other.

(c) In accordance with the Representations and Warranties contained in this Agreement at section III, at the Connection Date as set forth in Section 7.2, the Sewer System and the Pump Station Lot shall be conveyed by the City to the County.

4.2 Conditions Precedent. The following are all conditions precedent to the Parties' right and obligation to proceed to the Construction Phase (as described in Article V below). If any of the conditions below are not waived or modified by both Parties, or if the Parties have not satisfied such conditions within two (2) years of the Effective Date, the County or the City may terminate this Agreement upon written notice to the other. If this Agreement is terminated pursuant to the provisions of this Section, each Party shall use reasonable efforts to restore any property of the City and the Sewer System for which they were responsible to the condition in which it existed prior to the Effective Date, reasonable wear and tear, natural deterioration and obsolescence excepted.

(a) Approvals. The Parties shall have obtained, at the appropriate time, all necessary approvals, consents, and permits from all applicable Federal, State and Local boards, bodies, agencies and authorities, and obtained all access, easement, ownership and control rights, as may be required to carry out the Project.

(b) Funding. The funding of the Project as set forth in Funding Plan, Appendix H attached hereto and made part hereof, shall have materialized, or, in the event that any component of the Funding Plan fails to materialize, the Parties shall have agreed on a substitute component for the Funding Plan.. The Parties shall cooperate in seeking that the Federal and New York State funding is received by the appropriate Party or Parties. If such funding cannot be secured, the County or the City may terminate this Agreement upon written notice to the other party. It is understood and agreed that the City's contribution to the funding of the Project shall not exceed the authorization provided in Resolution 66/17 of the City of Long Beach, dated June 23, 2017. Notwithstanding the above, it is understood and agreed that the City may utilize funding for the Project and/or to decommission, demolish and/or repurpose the Plant.

(c) Plans and Specifications. Following the Effective Date, the County shall have procured and let contracts with architects, engineers and other design professionals in connection with the preparation of plans and specifications for the Pump Station and the force mains and such plans and specifications shall have been prepared and shall be acceptable to the County in all respects. Copies of such plans and specifications shall be provided promptly to the City for its review and comments.

(d) Construction Contracts. Following the procurement and letting of contracts with architects, engineers and other design professionals, the County shall have bid and entered into appropriate agreements with contractors to do the work and furnish all labor, materials, equipment, tools and appliances that may be necessary to perform and complete the construction of the County's Project components. Copies of such construction contracts shall be provided promptly to the City for its review and comments prior to any bids and/or awards.

(e) Condition of Sewer System. The Sewer System shall be substantially in the same condition as it was on the Effective Date at the time construction of the Pump Station commences, subject to ordinary wear and tear, natural deterioration, and obsolescence.

(f) Subdivisions. The Parties shall, at the appropriate time, have obtained all requisite approvals for and completed any subdivisions required by applicable Laws and agreed to by the Parties in connection with this Agreement.

(g) Delivery of Documents. (i) all existing surveys, all existing subdivisions, existing easements and access agreements and all requisite approvals (other than those approvals for which the County is obligated pursuant to this Agreement) so that the City will be in a position, once the area of the City is to be consolidated into the District pursuant to this Agreement, to transfer title to, [or if required by this Agreement lease], to the County the Sewer System; (ii) a list of all service contracts, insurance policies, certificates, permits, approvals and other documents in connection with the Sewer System and the delivery of Sewerage Services which are then in effect and assignable by the City; if any (iii) such other documentation as the Parties reasonably determine to be necessary to consummate the transactions contemplated in this Agreement; and (iv) If the Parties agree that the County must own the Pump Station Lot during construction, the City shall have delivered to the County a duly-executed Bargain and Sale Deed with covenants against grantor's acts for the Pump Station Lot, subject to exceptions of record

(provided the same do not prohibit or materially interfere with the proposed development, use and operation of the Pump Station Lot for the purposes intended by this Agreement) and such other exceptions as are reasonably approved by counsel for the County (collectively, the “**Permitted Exceptions**”) so as to convey good and insurable title to the reasonable satisfaction of the County; The Deed for the Pump Station Lot shall include the covenant set forth in Appendix F annexed hereto and made a part hereof. .

4.3 Withdrawal. Subject to Section 4.1(b) above A Party may withdraw from this Agreement during the Pre-Construction Phase only on the following terms:

- (i) The Parties have not agreed upon a Funding Plan;
- (ii) Force majeure conditions;
- (iii) A Party that wishes to withdraw from this Agreement shall give written notice to the other Party of its intent to withdraw from the Agreement at least 60 days prior to its proposed withdrawal date;
- (iv) The withdrawing Party shall remain responsible to pay for the reasonable costs incurred by the non-withdrawing Party in connection with the work it performed towards the satisfaction of the conditions set forth in Section 4.2 herein by reason of such withdrawal
- (v) The withdrawing Party shall cooperate with the non-withdrawing Party to minimize potential disruption caused by the withdrawing Party’s withdrawal. The withdrawing Party’s cooperation includes executing assignments of agreements and facilitating an orderly transition to termination of this Agreement;
- (vi) A Party’s withdrawal from this Agreement has no bearing on the continued requirements and obligations of each Party under any Consent Order with the NYSDEC or other governmental entity.

## **V. Construction Phase**

5.1 Commencement of Construction. Following the satisfaction or waiver of the conditions set forth in Section 4.2 above, the County shall issue a notice to the City that the Construction Phase of the Project shall commence in accordance with this Agreement (the “**Notice to Proceed**”) The County shall, in accordance with the Phased Project Schedule, thereupon commence the construction of the Pump Station and force main(s) and appurtenances to convey City sewage to the BPWPCP and shall complete same with diligence and continuity in substantial conformance with the approved plans and specifications all in accordance with applicable Laws; unless the parties agree to revise such plans and specifications, in which case, the County shall proceed in conformance with same. Notwithstanding any other provision of this Agreement, the County assumes no obligation, and the City shall, to the extent permitted by applicable laws, hold the county harmless for remediation of environmental conditions (except for those caused by the County) that exist on the Pump Station Lot before the date which is six

(6) months after the County issues the Notice to Proceed.

5.2 Access. As necessary and appropriate, the City shall grant to the County, at no cost to the County, a license to use and occupy the Sewer System as necessary to perform and complete all County construction work in connection with the Project, including, but not limited to, reasonable access to and use of the Plant and the Collection System as needed. Prior to any such use, occupancy and/or access by the County, its authorized representatives and/or agents, the County shall submit, or cause to have submitted, to the City proof satisfactory to the City of insurance coverages by the County's contractors in accordance with City requirements, including, but not limited to, a certificate of insurance naming the City as an additional insured. The County will make, and will cause its representatives and agents to make, all commercially reasonable efforts not to interfere with or interrupt the City's use or operation of the Sewer System and shall comply with the reasonable requests and requirements of the City. Should it become necessary to interrupt use or operation of the Sewer System due to construction work, the County and/or its agents shall provide reasonable advance notice to the City, of not less than twenty (20) days, so as to allow the City to inform residents accordingly. The County shall be responsible for any reasonable costs and expenses incurred by the City as a direct result of any negligent acts or omissions by the County, its subcontractors, agents and/or assigns in connection with any interruption to the sewer system.

5.3 Standards. In order to ensure timely and professional completion of such work, the County shall obtain performance and payment bonds from its general contractor in an amount and in a form acceptable to the City, with the City listed as beneficiary thereunder. The County shall, upon the City's request, provide the City with evidence that all contractors engaged to work on the Project maintain insurance reasonably satisfactory to the City and in accordance with the County's customary insurance requirements and all such policies shall name the City as an additional insured.

## **VI. Interim Operation**

### **6.1 Continued City Operation of Plant.**

(a) Effective during the period commencing on the Effective Date and expiring on the Connection Date (such period, the "**Interim Operating Term**"), the City shall continue, and the County shall have no responsibility for, the operation and maintenance of the Sewer System and the delivery of Sewerage Services.

(b) Notwithstanding anything contained in Section 6.1(a) above, at any time during the Interim Operating Term, the County may, but is not obligated, to assume ownership, operation, maintenance and control (including, but not limited to, by lease if and to the extent required by this Agreement) of all or part of the Sewer System if the Parties agree that the exercise of such authority is in the best interest of the Parties, provided, however, that the City shall pay to the County the sewer use fees and all other revenues of the Sewer System as provided in Sections 7.4, 7.9, and 7-a.1 herein if and when the County operates the Sewer System, including but not limited to, prior to the Connection Date, without set-off or reduction of any kind other than as expressly permitted by this Agreement and/or any written amendment

thereto. In the event that the Parties agree that the County may accept this responsibility prior to the Connection Date, the Parties will agree upon the extent of ownership, maintenance and control of the Sewer System as is necessary and in the best interest of the Project. Such ownership, maintenance and control shall be agreed upon by the County Executive and the City Manager.

6.2 City Indebtedness. Unless the Parties mutually agree that the County shall assume responsibility for ownership, operation, maintenance and control of all or part of the Sewer System, pursuant to Sections 6.1(b) of this Agreement, the City shall continue to pay debt service on, and otherwise comply with all covenants, terms and conditions in connection with, any outstanding bonds or indebtedness relating to the Sewer System as shown on the Debt Statement until, pursuant to and in accordance with Section 7.7 of this Agreement, the Connection Date. In the event the County assumes control of the entire Sewer System pursuant to Section 6.1(b) hereof, the County and the City shall proceed as if the Connection Date had occurred, with the exception that the Plant will be consider part of the Sewer System.

6.3 Standard of Operations. Throughout the Interim Operating Term, the Party operating the Sewer System shall exercise the same care in providing Sewerage Services and maintaining the Sewer System as previously exercised by the City. During the Construction Phase, the Parties agree to use good faith best efforts to allow for the continued operation of the Sewer System in the full and ordinary course as more fully set forth in Section 5.2 and 5.3 of this Agreement.

6.4 Adjustments to Sewer Use Fee Schedule. Throughout the Interim Operating Term, the City shall adjust the Sewer Use Fee Schedule as appropriate to accurately reflect increases in the costs of operating the Sewer System (including, but not limited to, the cost of debt service), and shall impose any such additional charges to the City users. In no event shall the Sewer Use Fee Schedule be less than the amount needed to pay all costs actually incurred by the City and/or the County associated with providing Sewerage Services to the City (including, but not limited to, the cost of debt service). In furtherance of the forgoing, the City shall promptly notify the County of any adjustments to the Sewer Use Fee Schedule. A surplus, if any, will be applied toward indebtedness.

6.5 Costs and Expenses. All costs and expenses in connection with the provision of Sewage Services prior to the Connection Date shall be borne by the Party operating the Sewer System, except as may otherwise be provided herein, provided, however, that the City shall pay to the County the sewer use fees and all other revenues of the Sewer System as provided in Section 7.4 and 7.7 herein if and when the County operates the Sewer System, including but not limited to, prior to the Connection Date without set-off or reduction of any kind other than as expressly permitted by this Agreement and/or any amendment thereto.

6.6 Notification of Claims. Prior to the Connection Date, the City shall promptly notify the County of any claims made against the City in connection with the Sewer System and the County shall promptly notify the City of any claims made against the County in connection with the Sewer System.

6.7 Release. Notwithstanding the foregoing and to the extent permitted by applicable Laws, rules and regulations, (i) the Parties are not responsible for and the Parties hereby release one another and each's officers, employees, and agents, assigns, vendors, partners, affiliates, predecessors, successors, servants, officers, employees, and/or independent contractors from any and all claims, demands, causes of actions, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees), whether known or unknown, liquidated or contingent, in connection with the Sewer System, arising prior to the Connection Date, unless the same are due to the negligence or willful acts or omissions of the other Party and each's officers, employees, and agents, assigns, vendors, partners, affiliates, predecessors, successors, servants, officers, employees, and/or independent contractors during the Interim Operating Term. The provisions of this Section shall survive the expiration or sooner termination of this Agreement. Nothing in this section shall alter or affect, in any manner whatsoever, the parties' respective rights and/or obligations set forth under Section 8.7 of this Agreement.

6.8 No Transfers, Further Indebtedness or Modifications. The City agrees that, prior to the Connection Date, it will not, without the prior written consent of the County, which will not unreasonably be withheld, conditioned or delayed (i) sell, lease, license, mortgage or otherwise encumber or give up any portion of the Sewer System to anyone other than the County, (ii) except in connection with any required repairs or replacements of any portion of Sewer System prior to the Connection Date, incur any additional indebtedness on or secured by the Sewer System other than such indebtedness listed on the Debt Statement except as may otherwise be provided herein, or (iii) make any modifications to the terms and conditions of any bond indebtedness or other financing agreements in connection with the Sewer System, except (iv) to the extent such modification results in a reduction of the amount of such indebtedness or in the debt service payable thereunder, and (v) as otherwise permitted by this Agreement. Nothing contained in this Section 6.8 shall be deemed to prohibit or limit the City's ability and lawful exercise of its rights to renew any bond anticipation notes upon the scheduled maturity thereof or to convert any such notes to bonds.

6.9 Required Repairs and Improvements. Any capital funds required by State permitting agencies or governmental authorities during the Interim Operating Term to be expended by the City to make major repairs or modifications to the Plant (other than those contained in the consent order entered into between the City and the DEC) shall be added to an amended Debt Statement and paid in accordance with the terms and conditions contained in Sections 6.2 or 7.7, as the case may be, of this Agreement, provided, that: (i) the City gives the County advance notice of the requirements of and the opportunity to participate in all discussions with the State permitting agencies or governmental authorities concerning the required repairs or modifications, (ii) the County is afforded the opportunity to propose to State permitting agencies or governmental authorities alternative means of completing the repairs or modifications in a manner that reduces or eliminates the required capital expenditure and (iii) the City works cooperatively and in good faith to give full consideration to any alternatives proposed by the County, subject to review and approval by State permitting agencies or governmental authorities.

## VII. Connection Phase

7.1 Connection. Effective on the Connection Date, (i) the County shall connect the Pump Station to the Sewer System and the BPWCP (the "**Connection**"), (ii) unless already done pursuant to Section 6.1(b) of this Agreement, the County shall own operate and maintain the Sewer System and provide Sewerage Services within the City and the City shall pay to the County the sewer use fees and all other revenues as provided in Sections 7.4, 7.6, 7.7, 7.9 or otherwise herein.

7.2 The Connection Date. The "**Connection Date**" shall mean that date which is the earlier of (i) the first business day after all conditions precedent to the Connection set forth in Section 7.3 have been satisfied to satisfaction of the Parties or waived by both Parties or (ii) such other date as mutually agreed to by the Parties in writing. Notwithstanding, the foregoing, if the Connection Date has not occurred by the five (5) year anniversary of the date of issuance of the Notice to Proceed, then (1) this Agreement may be terminated by the County or the City, whereupon the Parties agree to execute any documents necessary to unwind the transactions contemplated by this Agreement, all real property interests transferred by the City to the County shall be transferred by the County back to the City and/or its designee(s) pursuant to the same instruments by which such interests were transferred to the County (or, in the event the City has leased all or any portion of the Sewer System to the County pursuant to this Agreement, such lease(s) shall be terminated), and all rights and responsibilities in connection with the provision of Sewerage Services and payment of City indebtedness shall revert back to the City and (2) to the extent the failure to connect is due to the negligent acts or omissions, willful misconduct or breach of performance under this Agreement by either Party, its agents, employees, contractors or representatives, the offending Party shall (A) be responsible for restoring the Pump Station Lot to its substantially similar condition on the Commencement Date and (B) shall pay any fines incurred during the pendency of this Agreement that would not have been incurred but for this Agreement, it being understood that the offending Party shall have the right to contest any fines prior to making payment. In the event that this Agreement is terminated pursuant to this Section, then, to the extent the failure to connect is due to the negligent acts or omissions, willful misconduct or breach of performance under this Agreement by either Party, its agents, employees contractors or representatives, the responsible Party shall reimburse the other Party for any reasonable costs and expenses the Party has incurred in connection with its performance under this Agreement, including, without limitation, reasonable legal fees. In the event this Agreement is terminated pursuant to this paragraph, and to the extent the County has previously assumed ownership, operation, maintenance and/or control of all or part of the Sewer System pursuant to Section 6.1, above, all sewer use fees and other revenues will immediately become the sole and exclusive property of the City, and all previous obligations to remit same to the County, under any part of this Agreement, shall expire simultaneously.

7.3 Conditions Precedent to Connection. The following are all conditions precedent to the Parties' respective right and obligation to proceed with the Connection. In the event that any of the conditions below are not satisfied within 60 days prior to the Connection Date, or waived by the Parties, the Parties may terminate this Agreement upon 90 days' written notice to the other.



(a) Accuracy of Representations and Warranties. All respective representations and warranties made by the City and the County shall be true, complete and correct in all material respects on the Connection Date.

(b) Construction of Pump Station, Force Main and Sewer Connection Complete. Construction of the Pump Station, force main and appurtenances shall have been completed in accordance with the approved or revised plans and specifications and applicable Law and the Pump Station shall be fully operational and capable of collecting and conveying of the City sewage in accordance with applicable Laws.

(c) Approvals. The Parties shall have obtained all necessary approvals, consents and permits from all applicable Federal, State and Local boards, bodies, agencies and authorities as may be required to carry out the Project.

(d) Reserved.

(e) Condition of Sewer System. The Sewer System shall be substantially in the same condition on the Connection Date as it was on the Effective Date subject to ordinary wear and tear.

(f) Subdivisions. The Parties shall have obtained all requisite approvals for and completed any subdivisions required by applicable Law and agreed to by the Parties in connection with this Agreement.

(g) Delivery of Documents by City. The City shall have delivered to the County all necessary documentation evidencing transfer of all of its right, title and interest, if any, to the Sewer System, including, but not limited to, (i) if not previously delivered pursuant to Section 4.2, duly-executed Bargain and Sale Deed(s) with covenants against grantor's acts with respect to the Pump Station Lot and, in any event, duly-executed quit claim deeds with respect to the Sewer System, (ii) easements or access rights to City-owned property(ies) in connection therewith, (iii) an assignment of all of the interest the City has in any service contracts, insurance policies, certificates, permits, approvals and other documents in connection with the Sewer System which are then in effect to the extent, if any, the same are assignable by the City and are accepted by the County and (iv) such other documentation as is necessary to consummate the transactions contemplated in this Agreement. Any deeds delivered to the County pursuant to this subsection shall include the covenant set forth in Appendix F annexed hereto and made a part hereof.

(h) Delivery of Documents by County. The County shall have delivered to the City all necessary documentation evidencing the County's assumption of all right, title, interest, of and for the Collection System, including, but not limited to, (i) duly-executed Bargain and Sale Deed(s) with covenants against grantor's acts with respect to the Pump Station Lot and duly-executed quit claim deeds with respect to the Sewer System, evidencing the County's agreement to be bound by the terms of the covenant set forth in Appendix F annexed hereto and made a part hereof, and (ii) such other documentation as is necessary to consummate the transactions contemplated in this Agreement.

7.4 Collection of Sewer Use Fees by the City and Payment of User Fees to the County. As a condition of the County's obligation to maintain and operate the Sewer System, commencing on the Connection Date the City, subject to the City Council's annual obligation, if any, to approve fees and fee ordinances within its budget processes, covenants that it shall impose, collect, enforce and pay over to the County in accordance with 7.9, and in a time and manner to be memorialized in a Contract Administration Memorandum pursuant to Section 8.19, sewer user fees in the aggregate in an amount no less than the County's total costs and expenses of operating, maintaining and managing the Sewer System, including, but not limited to allocated debt service of the County and the City and ongoing operational costs until the area of the City is consolidated into the District as provided for in Section 7-a.2. The Parties acknowledge that if the City fails to honor its covenant as provided above to impose, collect and remit sewer user fees promptly to the County, the County's ability to operate the sewer system will be irreparably harmed and the County may seek injunctive relief to compel the turnover of the fees to the County.

7.5 Standards of Service. The County covenants to maintain and operate the Sewer System so as to be capable of providing Sewerage Services in compliance with this Agreement, and in accordance with all professionally accepted standards (as amended), the Act and all applicable Laws, rules and regulations. The Parties acknowledge that if the County fails to honor its covenant to maintain and operate the Sewer System after the Connection Date, the City shall be entitled injunctive relief to compel the County to operate and maintain the Sewer System.

7.6 Costs and Expenses. All costs and expenses incurred after the Connection Date in connection with the provision of Sewerage Services shall be borne by the County, provided, however, that the City shall pay to the County the sewer use fees and other revenues of the Sewer System as provided in Section 7.4, 7.7 and 7a-1 herein if and when the County operates the Sewer System without set-off or reduction of any kind other than as expressly permitted by this Agreement.

7.7 City Debt.

(a) Commencing on the Connection Date as long as the City pays to the County the sewer use fees and other revenues of the Sewer System as provided in this Agreement herein if and when the County operates the Sewer System, including but not limited to, prior to the Connection Date, without set-off or reduction of any kind other than as expressly permitted by this Agreement, the County shall pay in full all outstanding indebtedness of the City with respect to the Sewer System (including but not limited to bonds, bond anticipation notes indebtedness to the City's general fund. All as identified and included in Appendix E. Such debt service payments shall be made directly to the City or its designee, or as so instructed by the County Treasurer in consultation with the City, at least ten (10) business days prior to the Connection Date, subject to the City's full compliance with all County voucher and payment procedures.

(b) In the event that, prior to the Connection Date, the City intends to incur any additional indebtedness on or secured by the Sewer System which is not included on the Debt Statement, the City shall notify the County of such fact and the Parties shall confer to consider the

terms under which the County would become responsible for the payment of such additional indebtedness upon the Connection Date. If the County becomes responsible for such additional debt in accordance with Section 7.7(a), the Debt Statement shall be amended accordingly by the Parties and the Debt Statement as so amended shall replace the Debt Statement attached to this Agreement. Notwithstanding the foregoing, if the City reasonably determines that repairs and/or replacements to the Sewer System are required in order that the same may continue to fully operate in the ordinary course and in accordance with applicable Laws, the City may, upon notice to (but without the need for the consent of) the County, incur such additional indebtedness in connection with such repairs and/or replacements. Nothing contained in this Section 7.7(b) shall be deemed to prohibit or limit the ability of the City to renew any bond anticipation notes upon the scheduled maturity thereof or to convert any such notes to bonds but only if such conversion is required under the Local Finance Law of the State of New York. In no event shall the County have any responsibility to pay any such City debt unless the City pays to the County the sewer use fees and other revenues of the Sewer System as provided in Sections 7.4 and 7.6 herein.

7.8 Transfer of City Employees. The Parties acknowledge and agree that no City employees will be transferred to the County as a result of this Agreement. Nothing herein precludes a Long Beach employee from accepting employment with a County contractor.

7.9 Sewer System Billing. The City shall continue to perform all aspects of imposition, billing, collection, maintenance and enforcement of Sewer System user fees and retain as an offset against Sewer System revenue the cost of doing so in an amount that corresponds to its actual costs, including salaries, benefits and retirement expenses (“administrative costs”). This expense may be retained at such intervals as billing occurs.

## **VII-a. Transition and Consolidation**

7-a.1 Transition Period. Commencing on the Connection Date for as long as the City’s sewer debt is outstanding, the County shall provide sewer disposal services to the City until consolidation of the area of the City receiving sewer disposal and/or collection services from the County and the City shall provide to the County sewer user fees imposed, collected and enforced by the City as set forth in Section 7.4 of this Agreement without set off or deduction other than as provided in such section.

7-a.2 Consolidation. At the conclusion of the transition period set forth in Section 7-a.1, the County shall pursuant to the Act or other applicable law consolidate the area of the City into one or more County zones of assessment within the District, including, changing the boundaries of the applicable uniform zone(s) of assessment for sewer collection and disposal services in the District.

## **VIII. General**

8.1 Term. This Agreement shall commence on the Effective Date and shall expire at the consolidation the area of the City receiving sewer collection and/or disposal services into the District as provided in Section 7-a.2 of this Agreement unless sooner terminated as herein provided.

8.2 Cooperation. The Parties shall coordinate and cooperate in a reasonable manner with respect to completing the Project, including, without limitation, obtaining or authorizing (i) surveys, (ii) subdivisions to the extent required by applicable Law, (iii) easements and access agreements, and (iv) all requisite approvals so that the City will be in a position to transfer good and insurable title to the Pump Station Lot, such title, if any, as the City may have to the Sewer System (or any part thereof), or lease as may be required pursuant to this Agreement, to the County, subject to Permitted Exceptions, on or before the Connection Date and that the Parties will be in a position to transition the area of the City into the District in accordance with the terms and conditions contained in this Agreement. It is the intention of the City to transfer to the County the Pump Station Lot and the Sewer System, and any material components of same. The storm water system currently serving the City and all other real property located in the City will be retained by the City, and, in the event that this Agreement infers otherwise, then this Agreement shall be deemed amended accordingly to exclude such components.

8.3 Notices. Any Notice required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, or (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed, or three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, and (d) if to a Party or the Parties, to the attention of the persons who executed this Agreement on behalf of the respective Parties at the addresses first above written, or in each case to such other persons or addresses as shall be designated by written notice.

8.4 Bond Status. Neither Party shall take any action, or omit to take any action, the result of which act or omission shall have an adverse impact on the tax exempt status of any note or bond issued by, or on behalf of, the County, specifically including but not limited to, Federal Laws, rules and regulations regarding private activity and arbitrage. The City and the County shall consult with the other and their respective bond counsel when appropriate to ensure compliance with such Laws, rules and regulations.

8.5 [Reserved]

8.6 [Reserved]

8.7 Indemnification; Defense; Cooperation.

(a) To the extent permitted by Law, each Party shall be solely responsible for and shall indemnify and hold harmless the other Party, and their respective officers, employees, and agents (the “**Indemnified Party**”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorney’s fees; court costs; and costs of alternative dispute resolution) and damages, directly arising out of the negligence or willful acts or omissions of the indemnifying Party or its respective agents, assigns, vendors, partners, affiliates, predecessors, successors, servants,

officers, employees, and/or independent contractors. The indemnifying Party's indemnification obligations shall include, without limitation, the payment and satisfaction of any judgment, decree, award, loss or settlement in connection therewith. The Parties indemnities provided in this Section 8.7 are for the exclusive benefit of the parties and its indemnities and will not inure to the benefit of any other person.

(b) The indemnifying Party shall, upon the appropriate Indemnified Party's demand and at the Indemnified Party's direction, promptly and diligently defend, at the indemnifying Party's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against the Indemnified Party for which the indemnifying Party is responsible under this Section, and, further to the indemnifying Party's indemnification obligations, the indemnifying Party shall pay and satisfy any judgment, decree, loss or settlement in connection therewith. (b) Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Additionally, indemnifying Party shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel who is approved by the indemnified Party, immediately upon tender to indemnifying party of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than the indemnifying Party are responsible for the claim does not relieve indemnifying Party from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel indemnifying Party asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified Party. In order for the indemnifying Party to be relieved of the duty to defend, there must be no possible factual or legal basis on which indemnifying Party's duty to indemnify, under any provision of this indemnity agreement, could be held to attach.

(c) Each Party shall, and shall cause its agents, assigns, vendors, partners, affiliates, predecessors, successors, servants officers, employees and/or independent contractors to cooperate with the other Party in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement.

(d) The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

8.8 Independent Contractor. The City shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the City (a "**City Agent**"), (i) be deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person (as hereinafter defined) with the authority to commit the County to any obligation. The County shall not, nor shall any officer, director, employee, servant or agent (a "**County Agent**"), (i) be deemed a City employee, (ii) commit the City to any obligation, or (iii) hold itself, himself or herself out as a City employee or Person (as hereinafter

defined) with the authority to commit the City to any obligation. As used in this Agreement the word “**Person**” means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

#### 8.9 Compliance With Law.

(a) Generally. The Parties shall comply with any and all applicable Federal, State and local Laws, and those Laws relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word “**Law**” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The Parties acknowledge and agree that all records, information, and data (“**Information**”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by Law. The Parties acknowledge that Information in the County’s or City’s possession may be subject to disclosure under Section 87 of the New York State Public Officer’s Law. In the event that such a request for disclosure is made, the County or City shall make good faith efforts to notify the other Party of such request prior to disclosure of the Information so that the Parties may take such action as it deems appropriate.

8.10 Accounting. The Parties shall maintain and retain, for a period of six (6) years following the expiration or earlier termination of the Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually (“**Records**”), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles to the extent applicable. Such Records shall at all times be available for audit and inspection by the County Comptroller, the City Clerk, and any other governmental authority with jurisdiction over this Agreement, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

8.11 Consent to Jurisdiction and Venue; Governing Law; Jury Trial. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in the State, and the Parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of the State, without regard to the conflict of laws provisions thereof.

8.12 Events of Default. The following events shall be Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

(a) Subject to Section 4.1 (b), above either Party shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder, and such failure shall continue unremedied for a period of sixty (60) days after Notice thereof from the non-defaulting Party or, with respect to defaults not reasonably capable of cure, within sixty (60) days, fails to commence to cure such default within such 60-day period and thereafter fails to diligently prosecute such cure; or

(b) Any representation or warranty made by a Party herein proves to be false or misleading in any material respect, and such condition shall impair the ability of the non-defaulting Party to perform any obligation hereunder and shall continue unremedied for a period of sixty (60) days after written notice thereof by the defaulting Party or, with respect to defaults not reasonably capable of cure within sixty (60) days, fails to commence to cure such default within such 60-day period and thereafter fails to diligently prosecute such cure; or

(c) Either Party shall file any petition for dissolution or liquidation of such Party, or a Party shall commence a case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or a Party shall have consented to the entry of an order for relief in a case under any such Law, or a Party generally shall fail to pay its debts as such debts become due, or a Party shall fail promptly to satisfy or discharge any execution, garnishment or attachment of such consequences as may impair its ability to carry out its obligations under this Agreement, or a receiver, custodian or trustee (or other similar official) for a Party or any substantial part of its property shall have been appointed or taken possession thereof, or a Party shall make a general assignment for the benefit of its creditors, or a Party shall enter into an agreement or composition with its creditors, or a Party shall take any action in furtherance of any of the foregoing; or there shall be filed against a Party a petition in bankruptcy which results in an order for relief being entered or, notwithstanding that an order for relief has not been entered, the petition is not dismissed within ninety (90) days of the date of the filing of the petition, or there shall be filed under any federal or State Law relating to bankruptcy, insolvency or relief of debtors of a petition against a Party for reorganization, composition, extension or arrangement with creditors which either (i) results in a finding or adjudication of insolvency of such Party or (ii) is not dismissed within ninety (90) days of the date of the filing of such petition. Any action by the Nassau County Interim Finance Authority shall not trigger an event of default under this Agreement.

#### 8.13 Remedies.

(a) Remedies. If either Party shall fail to observe or perform any covenant, condition or agreement on its part to be observed or performed, the non-defaulting Party shall, if such default has not been cured or waived in writing by the non-defaulting Party, have the right to institute any action at law or in equity deemed by the non-defaulting Party to be necessary or desirable to collect any amounts then due under this Agreement or thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the defaulting Party hereunder.

(b) Remedies Cumulative. The rights and remedies under this Agreement shall be cumulative and shall not exclude any other rights and remedies allowed by Law, provided there

is no duplication of recovery. The failure to insist upon a strict performance of any of the obligations of the County or the City or to exercise any remedy for any violation thereof shall not be taken as a waiver for the future of the right to insist on strict performance by the County or the City or of the right to exercise any remedy for the violation.

8.14 All Legal Provisions Deemed Included; Severability; Supremacy; Construction.

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of any Party to this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against any Party as drafter.

8.15 Successors and Assigns. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

8.16 No Arrears or Default. No Party is in arrears to any other Party to this Agreement upon any debt or contract and no Party is in default as surety, contractor, or otherwise upon any obligation to another Party, including any obligation to pay taxes to, or perform services for or on behalf of, another Party.

8.17 Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the Nassau County Executive or his or her duly-designated deputy (the "County Executive") and the City Manager, or, if required, the City Council or its duly designated representative, and any purported assignment, other disposal or modification without all such prior written consents shall be null and void. The failure of any Party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.



8.18 [Reserved]

8.19 Contract Administration Memoranda.

(a) Administrative Communications. The Parties recognize that a variety of contract administrative matters may arise throughout the term of this Agreement. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications (except to the extent that the resolution of any such matter requires legislative approval and an amendment to this Agreement pursuant to subsection (d) of this Section), once resolution is reached, can be formally reflected in the respective records of the Parties so as to permit the orderly and effective administration of this Agreement.

(b) Contract Administration Memorandum. The principal formal tool for the administration of matters arising under this Agreement among the Parties shall be a Contract Administration Memorandum. A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the City as to matters of interpretation and application arising during the course of the performance of their obligations hereunder.

(c) Procedures. The County or the City may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, and signed by the Commissioner of Public Works and the City Manager. The County and the City each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Agreement.

(d) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation, application and performance of this Agreement in accordance with the terms hereof. Any material change, alteration, revision or modification of this Agreement, however, shall be effectuated only through a formal amendment to the Agreement authorized, in accordance with the Law.

8.20 Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

8.21 Entire Agreement. This Agreement represents the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

8.22 Third Party Claims. Nothing in this Agreement shall create or give to third parties any claim or right of action against any Party beyond such as may legally exist irrespective of this Agreement.

8.23 Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all approvals have been obtained, including, but not limited to, approval by the County Legislature, and the City Council, and (ii) this Agreement has been executed by the County Executive and the City Manager.

(b) Availability of Funds. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the Parties from the state and/or federal governments.

[The rest of this page is intentionally left blank]

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement as of the date this Agreement is last executed by the Parties hereto.

**COUNTY OF NASSAU**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF LONG BEACH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**County of Nassau's Acknowledgement:**

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of \_\_\_\_\_; that he or she is \_\_\_\_\_ of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the County Government Law of Nassau County.

NOTARY PUBLIC

**City's Acknowledgement**

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2019 before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he resides in the County of \_\_\_\_\_; that he is the \_\_\_\_\_ of the Incorporated City of Long Beach, the corporation described herein and which executed the above instrument and that he signed his name pursuant to the authority of the New York State \_\_\_\_\_ Law and the Code of the \_\_\_\_\_.

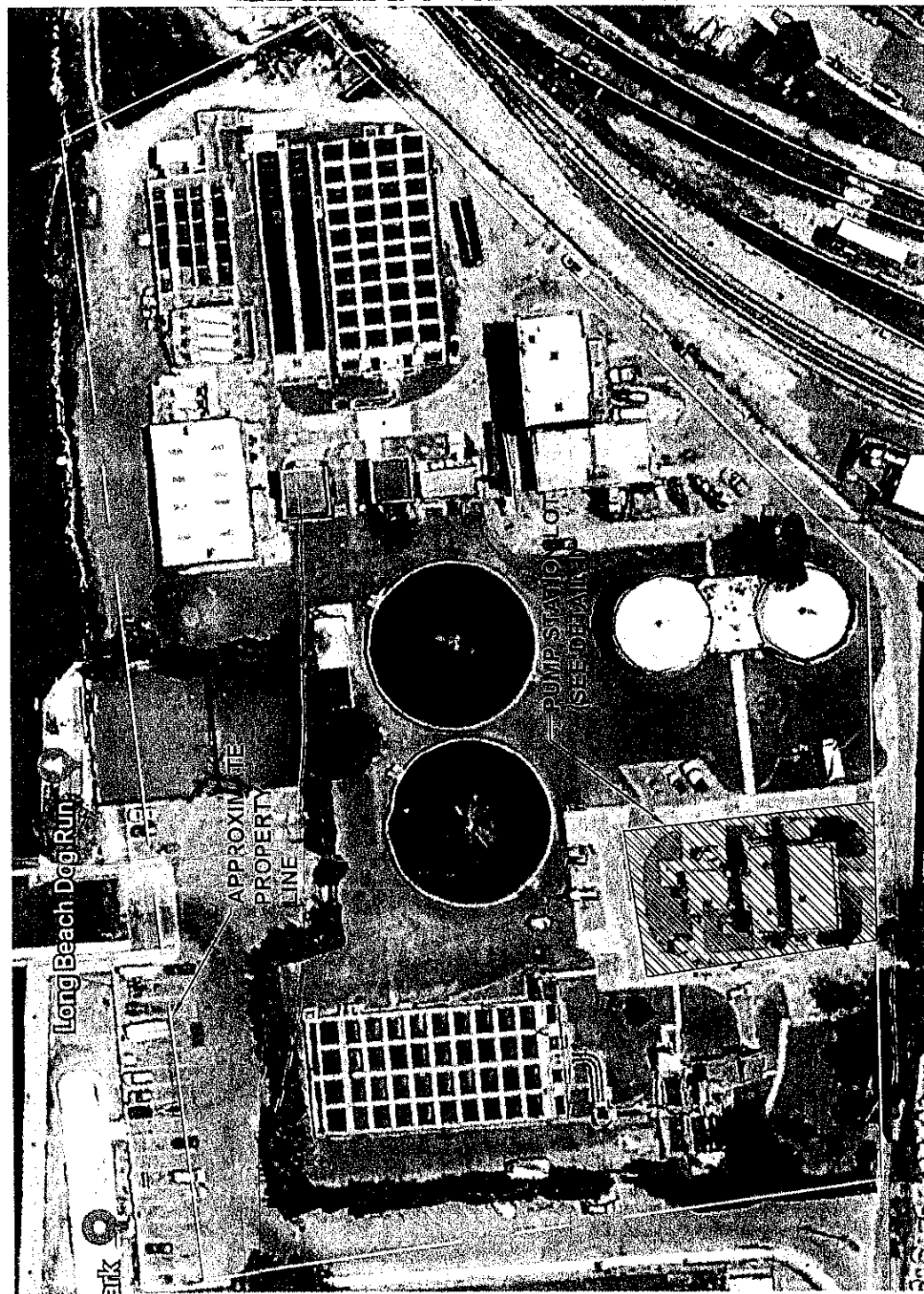
NOTARY PUBLIC

## **Appendix A**

### **Collection System Description**

The Long Beach WPCP's collection system is comprised of 51 miles of pipe, which range in size from 6 in. to 48 in. The collection system includes three pump stations - Roosevelt Avenue, which serves the eastern portion of the city, and Indiana Avenue and New York Avenue which serves the west.

**Appendix B**  
**Plant Site and Pump Station Lot**



APPENDIX B: EXISTING PLANT SITE  
LONG BEACH WATER POLLUTION CONTROL PLANT

## **Appendix C**

### **Plant Description**

The City of Long Beach Water Pollution Control Plant ("WPCP") is located on the north shore of the barrier bar, northeast of National Boulevard and discharges effluent into Reynolds Channel, which is a component of Hempstead Bay. The Long Beach WPCP serves a population of approximately 34,000 residents.

The Long Beach WPCP was constructed in 1951, with an original design treatment flow of 6.36 MGD, and had several improvements. The first improvement was completed in 1966, with no increase in the plant capacity. In 1987, the trickling filter distribution arms were replaced and plastic media was installed. The second upgrade was done in 1989, costing over \$9 million, and increased the design flow to the present 7.50 MGD. In 1995, the chlorine contact tank was completed and placed into service. Another upgrade was completed in 1997, which consisted of updating the controls and automation.

The City of Long Beach WPCP has a permitted design flow capacity of 7.50 MGD. The facility provides secondary treatment process employing sedimentation, fixed aerobic biological stabilization utilizing the trickling filter process, sand filters, anaerobic digestion and disinfection through a chlorine contact tank.

Preliminary treatment consists of two 1 HP vertical comminutors. Each comminutor has a flow range of 7.9 MGD and has a 21 in. wide overflow bar screen. There are four influent sewage pumps that operate alternately. Wastewater flow is measured by a 24 in. Venturi meter, which is located in the influent pump discharge. This meter is not operating properly due to grease and is calibrated every 3 months. There are two grit chambers, which are 20 ft. by 20 ft. with a flow depth of approximately 2.5 ft., provided for the removal of grit. The solids are pumped to a cyclone separator and onto a grit screw conveyor. Grit is manually removed for off-site disposal.

Secondary treatment is accomplished by three parallel rectangle primary sedimentation tanks that receive the combined pre-treated wastewater and secondary sludge return flow. Each tank is 138 ft. long, 32 ft. wide and an average depth of water of 14 ft. Settled sludge is manually discharged to a well and pumped to the digester tank. There are two parallel high-rate filters that are 96 ft. in diameter, with a depth of 5 ft. Wastewater is applied to each filter by four distributor arms that are 48 ft. long.

For optimal efficiency, approximately 8 MGD of trickling filter effluent is recirculated back to the trickling filters. Recirculation is provided by two constant single-speed vertical centrifugal pumps. The recirculation station is designed to accommodate four recirculation pumps. Only two pumps are needed to operate continuously. This station also houses two centrifugal pumps designed to return the secondary sludge to the primary clarifiers. Disinfection is accomplished by three sodium hypochlorite pumps capable of 50 gallons per hour. Sodium hypochlorite, at 15% strength, is stored in two storage containers, each holding 3,000 gallons. Sodium hypochlorite is injected into the wastewater prior to entering the chlorine contact tanks.



The plant has three parallel rectangular final clarifiers, with each tank being 133 ft. long, 30 ft. wide with a depth of 9 feet. Each clarifier contains eight 14 ft. effluent troughs.

This facility has two sand filter beds which are 16 ft. wide, 56 ft. long and 4 ft. deep. Each unit has an automatic backwash filter system, with 11 in. of filter sand.

Sludge handling is accomplished by two anaerobic digestion units. The system is used in series with a primary digester providing high-rate anaerobic stabilization of sewage solids and the secondary digester providing thickening through solids waste separation.

There are three pump stations which are presently being reviewed for updating. They are located at Roosevelt Avenue and Park Avenue, Indiana Avenue and Park Avenue and New York Avenue and Park Avenue. Each station has two sewage pumps with Roosevelt Ave and New York Ave running both, and Indian Ave running one with the second as a backup. Roosevelt Ave and New York Ave each have their own generator. Indian Ave is hooked up to the generator at the neighboring fire house.

The Long Beach WPCP has 13 permanent staff, with 11 certified operators and two trainee operators. Normal operation of the plant is from 8am to 4pm. There is a 4pm to 12am shift and a 12am to 8am shift.

There are 11 sewer maintenance personnel, who are also responsible for cleaning storm drains. There are five operators who check the three pump stations regularly.

The effluent flow meter is accurate and shows the plant is operating at 5.55 MGD. Every 2 weeks for a 5 day duration, the drinking water plant cleans out its filters and pumps iron sludge into the Long Beach WPCP.

The grit hopper is cleaned out by hand, accumulating approximately 1 cubic yard of grit per week. The Plant finds that there is far less grit now that lateral pipes have been repaired. There are 51 miles of lateral pipe.

The laboratory is not certified. Laboratory tests for State Pollution Discharge Elimination System (SPDES) permit requirements are contracted out to Ecotest Labs.

Muffin Monsters caused backups in the system and were replaced with automatically cleaned bar screens. The sand filters are maintained every Friday, consisting of draining and cleaning to help maintain the effluent.

There are several service contracts in effect for the diesel generator, flow meters and the methane monitoring system. The plant uses the City of Long Beach plumber and electrician personnel.

The four chlorine contact tanks are cleaned out every Thursday.

**Appendix D**  
**Sewer Use Fee Schedule**

Appendix D  
Sewer Use Fee Schedule

May 21, 2019

Item No. 3  
Ordinance No. 3031/19

The following Ordinance was moved by Pres. Eramo  
and seconded by Mr. Bendo :

ORDINANCE TO AMEND THE CODE OF ORDINANCES  
OF THE CITY OF LONG BEACH RE: WATER AND WATER  
DISTRIBUTION.

BE IT ENACTED, by the City Council of the City of Long Beach, New York, as  
follows:

Sec.1. Chapter 25, Article II, Division 2, Section 25-26 (a) and (b) of the  
Code of Ordinances of the City of Long Beach, as heretofore amended, shall be and the same are  
hereby amended, to read as follows:

**"Sec. 25-26. Water charges and sewer rents.**

(a) *Water rates;*

- (1) On and after July 1, 2019, the charge for water furnished by the city shall be **four dollars and fifty cents (\$4.50)** for each one thousand (1,000) gallons used or consumed upon each parcel of real estate in the city, as recorded by water meters or as estimated by the water/sewer administration at the city's discretion, and bills shall be rendered on the basis of said rate and shall be billed quarterly.
- (2) A minimum charge per quarter will be based on twelve thousand (12,000) gallons and a fee of **fifty three dollars and ninety-eight cents (\$53.98)**.
- (3) The following rates are applied to water usage per quarter:

<u>Usage:</u>	<u>Water Rate:</u>
12,001-150,000 gallons	\$4.81
150,001--300,000 gallons	\$4.89
300,001--600,000 gallons	\$5.11
600,001 and above	\$5.61

(b) *Charges for firematic systems:* On or after July 1, 2019, the charges for firematic systems shall be billed quarterly in advance, shall be due and payable when billed and entered, and shall be computed as follows:

Size of Firematic Supply	Monthly Charge
Up to and including 2"	\$110.49
Over 2" but not over 3"	\$202.17
Over 4"	\$711.55
Each standpipe not connected to a firematic system	\$212.14"

Sec. 2. This Ordinance shall take effect immediately.

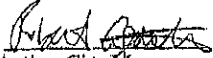
May 21, 2019

Page 2

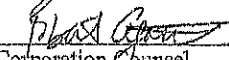
Item No. 3

Ordinance No. 3031/19

APPROVED:

  
\_\_\_\_\_  
Acting City Manager

APPROVED AS TO FORM & LEGALITY:

  
\_\_\_\_\_  
Corporation Counsel

VOTING:

Council Member Bendo - AYE

Council Member Mandel - AYE

Council Member Moore - AYE

Vice President Diamond - AYE

President Eramo - AYE

*please note there is a typographical error in Ordinance 3031/19 [City Code Section 25-26(b)] where the reference to "Monthly Charges" should read "Quarterly Charges."*

May 21, 2019

Item No. 4  
Local Law No. 11/19

The following Local Law was moved by Mr. Mandel  
and seconded by Ms. Moore :

Introductory No. 356  
Introduced by: Mr. Mandel

CITY OF LONG BEACH

CHAPTER II LAWS OF 2019

A LOCAL LAW

AMENDING THE CHARTER OF THE CITY OF  
LONG BEACH RE: SEWER RENTS.

BE IT ENACTED, by the City Council of the City of Long Beach, New York as follows:

Sec. 1. Article 6, Section 122(b)(2) of the Charter of the City of Long Beach, New York as set forth in Chapter 635 of the Laws of 1922, as heretofore amended, shall be and the same is hereby amended to read as follows:

**"Sec. 122. Sewer rents.**

(a) *Sewer system, defined.* As used in this section, the term sewer system shall mean and include the sewers, manholes, intercepting sewers, sewage pumping, treatment and disposal works, and any other plants, works or equipment and accessories, which are used or useful in connection with the collection, treatment or disposal of sewage and waste, and which are owned, operated or maintained by the city as part of the public sewer system. This definition is intended to include the sewer system both within and without the city.

(b) *Imposition and computation of sewer rents.*

1. In addition to any other fees or charges provided by law, the owner of any parcel of real property connected with the sewer system, including but not limited to real property connected with the sewer system by means of a private sewer or drain emptying into the sewer system, shall pay a sewer rent for the use of the sewer system.

2. Sewer rents applicable to premises within city limits. On and after July 1, 1975, the annual sewer rent for real property located within the city limits is hereby fixed at an amount equal to sixty-seven (67) per cent of the water charges and rents for any such real property.

On and after July 1, 1976, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to eighty-four (84) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof.

On and after July 1, 1978, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to seventy-five (75) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 1978.

On and after July 1, 1989, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to one hundred (100) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 1989.

On and after July 1, 2016, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to one hundred eight (108) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 2016.

On and after July 1, 2017, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to one hundred fifteen (115) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 2017.

On and after July 1, 2018, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to one hundred twenty (120) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 2018.

**On and after July 1, 2019, the sewer rents for real property located within the city limits is hereby fixed at an amount equal to one hundred thirty (130) per cent of the water charges for any such real property, to be billed and paid simultaneously with such water charges and to bear like penalties for nonpayment thereof, and bills shall be rendered on the basis of said rate on and after October 1, 2019."**

...

Sec. 2. This Local Law shall take effect immediately upon being filed in the Office of the New York Secretary of State.

May 21, 2019

Page 3

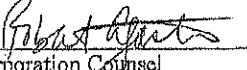
Item No. 4

Local Law No. II/19

APPROVED:

  
\_\_\_\_\_  
Acting City Manager

APPROVED AS TO FORM & LEGALITY:

  
\_\_\_\_\_  
Corporation Counsel

VOTING: AS AMENDED

Council Member Bendo - AYE

Council Member Mandel - AYE

Council Member Moore - AYE

Vice President Diamond - AYE

President Eramo - AYE

**Appendix E**  
**Debt Statement**



City of Long Beach  
Summary of Sewer Debt Payable at 6/30/19

As of 6/30/2019				
Description	Principal	Interest	Totals	
Serial Bonds	\$ 12,585,889	\$ 2,368,242	\$ 14,954,132	
BANs	3,260,761	54,237	3,314,998	See Notes
Interfund Payables	1,248,327	-	1,248,327	
<b>Totals</b>	<b>\$ 17,094,977</b>	<b>\$ 2,422,480</b>	<b>\$ 19,517,457</b>	

**Notes:** \$2,975,000 of the outstanding BANs, with interest payable of \$48,295, comes due 9/6/2019  
The balance comes due February 2020, with interest payable of \$5,942

Maturity Schedule-Serial Bonds			
Fiscal Year	Principal	Interest	Total
2020	1,325,487.16	373,299.87	1,698,787.02
2021	1,360,674.49	353,686.12	1,714,360.61
2022	1,204,643.56	316,103.41	1,520,746.97
2023	1,207,573.97	274,794.98	1,482,368.95
2024	1,254,267.60	232,449.11	1,486,716.70
2025	1,038,847.11	192,980.16	1,231,827.27
2026	859,626.00	160,640.10	1,020,266.10
2027	891,451.00	130,918.51	1,022,369.51
2028	743,637.00	103,639.95	847,276.95
2029	767,309.00	80,579.31	847,888.31
2030	791,458.50	57,473.34	848,931.84
2031	594,862.00	33,380.56	628,242.56
2032	101,254.00	18,727.60	119,981.60
2033	104,871.00	15,436.84	120,307.84
2034	108,487.00	11,897.44	120,384.44
2035	113,309.00	8,100.40	121,409.40
2036	118,131.00	4,134.60	122,265.60
<b>Totals</b>	<b>12,585,889.38</b>	<b>2,368,242.29</b>	<b>14,954,131.67</b>

0.01

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## **Appendix F Covenant**

“The Grantee, by the acceptance of this Indenture, covenants and agrees for itself and its successors and assigns that the premises will be used solely for municipal or governmental purposes of collecting, treating and disposing of sanitary sewage of Grantor. In the event that there is a breach of the above covenant herein by Grantee or its successors and assigns, the Grantor may provide written notice to Grantee, its successors and assigns, of said breach, which notice shall provide Grantee with a ninety (90) day period to cure its breach, and in the absence of such cure, at the option of the Grantor, all right, title and interest in and to all of the said premises shall revert to the Grantor and the Grantor shall have the right to enter upon said premises. Grantor’s failure to assert any of its rights under this Indenture, including, without limitation, the right of reversion, shall not constitute a waiver of such rights. In the event that any of the conditions or covenants herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining conditions or covenants shall not in any way be affected or impaired thereby.

It is the intention of the Grantor and Grantee that these covenants and conditions shall run with the land and shall be binding upon its Grantee and its successors and assigns.”

**Appendix G**  
**Phased Project Schedule**

(To be developed by County's engineering consulting firm and modified in response to meetings  
with State agencies to reflect grant eligibility)

## Appendix H

### Project Funding Plan

Municipality	Source Name	Total	Local Funds	Grants
NC	WQIP 2018 CFA Round VIII	\$ 5,000,000	\$ 1,250,000	\$ 3,750,000
NC	C1-5146-40-75 Nassau County SMLP Financing/Grant	\$ 3,726,250	\$ 2,794,688	\$ 931,562
LB	WQIP 2017 CFA Round VII	\$ 2,500,000	\$ 375,000	\$ 2,125,000
<b>Total Funding Available</b>		<b>\$ 11,226,250</b>	<b>\$ 4,419,688</b>	<b>\$6,806,562</b>
<b>Total Estimated Project Cost*</b>		<b>\$ 77,000,000</b>		* - Doesn't include Plant decommissioning/Demo
<b>Unsecured Funding Need</b>		<b>\$ 65,773,750</b>		
<b>Funding Opportunities</b>				
NC	WQIP 2020 CFA Round X	<u>\$5,000,000</u>	\$1,250,000	\$3,750,000
		<u>25,000,000</u>	\$15,000,000	\$10,000,000
NC/LB	2019 IMG Programs			
NC/LB	WQIP 2019 CFA Round IX	<u>\$10,000,000</u>	<u>\$2,500,000</u>	\$7,500,000
NC	**GOSR Funding	≤\$24,000,000		
LB	FEMA PA 406 Mitigation	\$10 mil to \$20 Mil		